



Universal Service Administrative Company
Schools & Libraries Division

Administrator's Decision on Appeal – Funding Year 2003-2004

January 06, 2006

Tony Korwin
Alamogordo Public Schools
1211 Hawaii Avenue
Alamogordo, NM 88311-0650

Re: Applicant Name: ALAMOGORDO PUBLIC SCHOOL DIST
Billed Entity Number: 143365
Form 471 Application Number: 377799
Funding Request Number(s): 1036354, 1036383
Your Correspondence Dated: November 10, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2003 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1036354, 1036383
Decision on Appeal: **Denied**
Explanation:

- You state that the SLD finding is inaccurate and incomplete because a reviewer attempted to replace one document for another, when in fact the one should be reviewed as a supplement to the other. You state that the evaluation sheets were provided in response to a request in April 2004 for a breakdown of the "District Funding Considerations" (DFC) that were stipulated in the RFP. You close the appeal by stating that it is easy to see that price consideration was a major part of the DFC and in an effort to further enforce/require that pricing is an important part of the selection for the evaluation sheet, a separate component was added as a supplement to the DFC not a replacement. If the SLD were to add it to the DFC, they would see that pricing ended up being a very large part of the consideration for the vendor selection receiving 50 of the possible 100 points.

- After a thorough review of the appeal and all relevant supporting documentation, it was determined that on April 7, 2004 (during the course of an Item 25 Competitive Bidding Review) you were contacted by the SLD because the support documentation that you submitted (Funding Year 2003 RFP for Internal Connections) did not list price as one of the criteria you had used for vendor selection. According to our records, the RFP that was submitted describes six (6) criteria to be used in evaluating competing bids with a certain number of points assigned to each criteria. The criteria are: Availability and Quality of Resources (20 points), Skills Transfer Plan (10 points), Project Coordination Multi-Vendor Environment (15 points), Technology Solutions/SOW's (20 points), District Funding Considerations (30 points), Other Vendor Attributes (5 points). You were contacted by the SLD and asked if the sub-elements (paragraphs E1, E1a, E1b and E1c) under "District Funding Considerations" had individual weights that added up to the indicated 30 points. On April 12, 2004 you responded by stating: "In going back through our paperwork for the vendor selection, we did not have a further breakdown of the District Funding Considerations last year..." Also, in your April 12, 2004 response you included a blank scoring matrix that you used to evaluate competing bids. This blank scoring matrix listed exactly the same (6) criteria and point values stated in your RFP with the exception of the Technology Solutions/SOW's criteria. The Technology Solutions/SOW's criteria was listed as Technology Solutions/Price on the blank scoring matrix. The SLD did not treat the blank scoring matrix as a replacement document. The scoring matrix was reviewed by SLD and it was concluded that "price" might be an element of the Technology Solutions criteria, however, the details of the RFP did not indicate that any consideration for the price of eligible products or services would be part of this section. Additionally, the RFP clearly indicates under the District Funding Consideration criteria sub-element (b) that consideration for "the cost to the District for all SOW's bid on as described by Letter D/Technology Solutions" would occur within this criteria of your vendor selection process. Also included in the District Funding Consideration criteria are other sub-elements that include ineligible services which cannot be included within the same factor for the price of eligible products and services. Since you did not assign individual values to all the elements within the District Funding Consideration criteria or any other criteria it is unclear that you considered only the price of eligible products and services and that price was your primary factor in selecting your service provider.

- SLD's review of your Form 471 application determined that price was not the primary factor when you selected your service provider. Since you did not demonstrate in your appeal that price was the primary factor when you selected your service provider, SLD denies your appeal.
- FCC rules require that applicants select the most cost-effective products and services offering with price being the primary factor. 47 C.F.R. § 54.511(a). Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. 47 C.F.R. § 54.511(a); *Request for Review by Ysleta Independent School District, et. al., Federal State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, FCC 03-313 ¶ 50 (rel. Dec. 8, 2003). Ineligible products and

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services may not be factored into the cost-effective evaluation. *See Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries*, CC Docket No. 96-45, *Public Notice*, 13 FCC Rcd. 16,570, DA 98-1110 (rel. Jun. 11, 1998).

If your appeal has been approved, but funding has been reduced or denied, you may appeal these decisions to either the SLD or the FCC. For appeals that have been denied in full, partially approved, dismissed, or canceled, you may file an appeal with the FCC. You should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received or postmarked within 60 days of the date on this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554. Further information and options for filing an appeal directly with the FCC can be found in the "Appeals Procedure" posted in the Reference Area of the SLD web site or by contacting the Client Service Bureau. We strongly recommend that you use the electronic filing options.

We thank you for your continued support, patience and cooperation during the appeal process.

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January 06, 2006

Tony Korwin
Alamogordo Public Schools
1211 Hawaii Avenue
Alamogordo, NM 88311-0650

Re: Applicant Name: ALAMOGORDO PUBLIC SCHOOL DIST
Billed Entity Number: 143365
Form 471 Application Number: 377841
Funding Request Number(s): 1044434
Your Correspondence Dated: November 10, 2005

After thorough review and investigation of all relevant facts, the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) has made its decision in regard to your appeal of SLD's Funding Year 2003 Commitment Adjustment Letter for the Application Number indicated above. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission (FCC). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1044434
Decision on Appeal: **Denied**
Explanation:

- You state that the SLD finding is inaccurate and incomplete because a reviewer attempted to replace one document for another, when in fact the one should be reviewed as a supplement to the other. You state that the evaluation sheets were provided in response to a request in April 2004 for a breakdown of the "District Funding Considerations" (DFC) that were stipulated in the RFP. You close the appeal by stating that it is easy to see that price consideration was a major part of the DFC and in an effort to further enforce/require that pricing is an important part of the selection for the evaluation sheet, a separate component was added as a supplement to the DFC not a replacement. If the SLD were to add it to the DFC, they would see that pricing ended up being a very large part of the consideration for the vendor selection receiving 50 of the possible 100 points.

- After a thorough review of the appeal and all relevant supporting documentation, it was determined that on April 7, 2004 (during the course of an Item 25 Competitive Bidding Review) you were contacted by the SLD because the support documentation that you submitted (Funding Year 2003 RFP for Internal Connections) did not list price as one of the criteria you had used for vendor selection. According to our records, the RFP that was submitted describes six (6) criteria to be used in evaluating competing bids with a certain number of points assigned to each criteria. The criteria are: Availability and Quality of Resources (20 points), Skills Transfer Plan (10 points), Project Coordination Multi-Vendor Environment (15 points), Technology Solutions/SOW's (20 points), District Funding Considerations (30 points), Other Vendor Attributes (5 points). You were contacted by the SLD and asked if the sub-elements (paragraphs E1, E1a, E1b and E1c) under "District Funding Considerations" had individual weights that added up to the indicated 30 points. On April 12, 2004 you responded by stating: "In going back through our paperwork for the vendor selection, we did not have a further breakdown of the District Funding Considerations last year..." Also, in your April 12, 2004 response you included a blank scoring matrix that you used to evaluate competing bids. This blank scoring matrix listed exactly the same (6) criteria and point values stated in your RFP with the exception of the Technology Solutions/SOW's criteria. The Technology Solutions/SOW's criteria was listed as Technology Solutions/Price on the blank scoring matrix. The SLD did not treat the blank scoring matrix as a replacement document. The scoring matrix was reviewed by SLD and it was concluded that "price" might be an element of the Technology Solutions criteria, however, the details of the RFP did not indicate that any consideration for the price of eligible products or services would be part of this section. Additionally, the RFP clearly indicates under the District Funding Consideration criteria sub-element (b) that consideration for "the cost to the District for all SOW's bid on as described by Letter D/Technology Solutions" would occur within this criteria of your vendor selection process. Also included in the District Funding Consideration criteria are other sub-elements that include ineligible services which cannot be included within the same factor for the price of eligible products and services. Since you did not assign individual values to all the elements within the District Funding Consideration criteria or any other criteria it is unclear that you considered only the price of eligible products and services and that price was your primary factor in selecting your service provider.

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- SLD's review of your Form 471 application determined that price was not the primary factor when you selected your service provider. Since you did not demonstrate in your appeal that price was the primary factor when you selected your service provider, SLD denies your appeal.
- FCC rules require that applicants select the most cost-effective products and services offering with price being the primary factor. 47 C.F.R. § 54.511(a). Applicants may take other factors into consideration, but in selecting the winning bid, price must be given more weight than any other single factor. 47 C.F.R. § 54.511(a); *Request for Review by Ysleta Independent School District, et. al., Federal State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, Order, FCC 03-313 ¶ 50 (rel. Dec. 8, 2003). Ineligible products and

services may not be factored into the cost-effective evaluation. *See Common Carrier Bureau Reiterates Services Eligible for Discounts to Schools and Libraries*, CC Docket No. 96-45, *Public Notice*, 13 FCC Rcd. 16,570, DA 98-1110 (rel. Jun. 11, 1998).

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We thank you for your continued support, patience and cooperation during the appeal process.

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Appendix 8

SLD website documents

On procurement



Step 3: Run an Open and Fair Competitive Bidding Process

Form 470 Information

Applicants must ensure an open and fair competitive bidding process to receive Schools and Libraries support.

The competitive bidding process begins when the *Description of Services Requested and Certification Form* (Form 470) is posted to USAC's website. In Form 470, the applicant describes the types of products and services it desires and for which it is accepting bids. The applicant must conduct a fair and open competitive procurement in which it decides upon which products services to order and report on the *Services Ordered and Certification Form* (Form 471).

The applicant must be ready to accept bids once the Form 470 is posted on the USAC website. The applicant also must take an affirmative role in evaluating such bids. Applicants may not delegate the evaluation role to anyone associated with a service provider.

Request for Proposals. A Request for Proposals (RFP) is not required, but it is a good idea to have one. An RFP describes the project undertaken, with sufficient details to inform potential bidders of the scope, location, and any other requirements for the project. If an RFP exists, the applicant must indicate on Form 470 where the RFP is available, whether on a website or from a contact person. If state or local procurement regulations impose additional requirements, such as eligibility requirements for bidders, these requirements must also be noted on Form 470.

Competitive Bidding. The goal of competitive bidding is to have as many bidders as possible respond to a Form 470 or an RFP so that the applicant can receive better service and lower prices.

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means there are no secrets in the process - such as information shared with one bidder but not with others - and that all bidders know what is required of them. The Form 470 or the RFP should be clear about the products, services, and quantities the applicant is seeking.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with a service provider prior to the competitive bidding that would unfairly influence the outcome of a competition or would furnish the service provider with "inside" information or allow it to unfairly compete in any way. For example, a conflict of interest exists when the applicant's consultant is associated with a service provider that is selected and is involved in determining the services sought by the applicant and the selection of the applicant's service providers.

Step 3: Open a Competitive Bidding Process

Describe Services Requested

Run an Open and Fair Competition

Form 470 Filing Information

Form 470 Receipt Notification Letter

Step 2 Develop a Technology Plan

Step 4 Select a Service Provider Process

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Step 3: Open a Competitive Bidding Process (Form 470)

Applicants must file the *Description of Services Requested and Certification Form* (Form 470) to begin the competitive process and must ensure an open and fair competitive bidding process for specific products.

Applicants must file a new Form 470 each funding year for requests for tariffed or month-to-month services and for new contractual services. When the Form 470 is filed, USAC will make it available to interested service providers by posting it to the USAC website.

Applicants **must**:

- Describe specific services or functions for support
- Identify the correct category of services: telecommunications, Internet access, internal connections, or basic maintenance of internal connections
- Identify recipients of services for support
- Follow all applicable state and local procurement laws
- Wait 28 days after the Form 470 is posted to the USAC website or after public availability of your Request for Proposals (RFP), whichever is later, before selecting a vendor or executing a contract (see Step 4: Select the Most Cost-Effective Service Provider)

Applicants **may**:

- Use RFPs or other solicitation methods tailored to specific needs and circumstances **in addition to** the required Form 470.

The Form 470 must be completed by the entity that will negotiate for eligible products and services with potential service providers. A service provider that participates in the competitive bidding process as a bidder cannot be involved in the preparation or certification of the entity's Form 470.

A new Form 470 is **not required** if an applicant intends to seek discounts on services provided under a multi-year contract executed under a posted Form 470 in a prior funding year.

Step 3: Open a Competitive Bidding Process

Describe Services Requested

Run an Open and Fair Competition

Form 470 Filing Information

Form 470 Receipt Notification Letter

Step 2 Develop a Technology Plan

Step 4 Select a Service Provider Process

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Step 4: Select the Most Cost-Effective Service Provider

Applicants must select the most cost-effective provider of the desired products or services eligible for support, with price as the primary factor.

Waiting Period. At the conclusion of the 28-day waiting period after the *Description of Services Requested and Certification Form* (Form 470) is posted on the USAC website, the applicant may select a vendor for tariffed or month-to-month services or execute a contract for new contractual services.

Bid Evaluation. Applicants must construct an evaluation for consideration of bids received in response to the posting of the Form 470 that makes price the primary factor in the selection of a vendor.

Contract Guidance. Applicants may also choose vendors from a State Master Contract, execute multi-year contracts pursuant to a Form 470, and enter into voluntary contract extensions, but certain additional contract requirements apply. In all cases, applicants must comply with state and local procurement laws.

Document Retention. Applicants must save all documentation pertaining to the competitive bidding process and vendor selection for five years. Applicants must certify and acknowledge on the Form 470 and the *Services Ordered and Certification Form* (Form 471) that they may be audited and that they must retain all records that can verify the accuracy of information provided.

Step 4: Select a Service Provider[Construct an Evaluation](#)[28-day Waiting Period](#)[Contract Guidance](#)[State Replacement Contracts](#)[Step 3](#) [Open a Competitive bidding Process](#)[Step 5](#) [Calculate the Discount Level](#)

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Step 3: Respond to Applicant Requests for Products and Services

Service providers should comply with all appropriate state and local procurement rules, and/or regulations and competitive bidding requirements when responding to applicants' *Description of Service Requested and Certification Forms* (Form 470) and/or Requests for Proposals (RFPs).

Applicants must conduct a fair and open competitive bidding process by which they determine the services they order for discounts. To be sure that a fair and open competition is achieved, service providers must hold neutral marketing discussions with applicants so as not to taint the competitive bidding process. The applicant should not have a relationship with the service provider prior to the competitive bidding process that would unfairly influence the outcome of a competition, furnish the service provider with "inside" information, or allow the service provider to compete unfairly in any way.

The applicant also must be in a position to accept bids once its Form 470 is posted on this website for 28 days. The applicant must take an affirmative role in the evaluation of such bids. The applicant may not delegate this evaluation role to anyone associated with a service provider.

When responding to Forms 470 or RFPs, service providers should comply with all appropriate state or local procurement rules and/or regulations and competitive bidding requirements. Service providers should also comply with any specific requirements detailed in an RFP.

Step 2 Search Applicant Requests for Service

Step 4 Applicants Select Service Provider

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